IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 884 of 1999()

C.C.NO.405/1997 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

.....

APPELLANT:

T.I.PAILY, THOTTAPPILLIL HOUSE,
MONAPILLY KARA, PUTHENCRUZ P.O.

BY ADV. SRI.LAL GEORGE

RESPONDENTS:

1. STATE AOF KERALA,REPRESENTED BY PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE GENERAL, ERNAKULAM.

2. K.N.PARAMESWARAN NAIR, KAPPILINGATTU HOUSE, VADAYAMPADY P.O., PUTHENCRUZ (VIA).

BY ADV. SRI.C.P.UDAYABHANU
R1 BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

CRL.APPEAL No. 884 of 1999

Dated this the 29th day of November, 2006

Judgment

Appellant is the complainant in C.C.No.405 of 1997 on the file of the Judicial First Class Magistrate's Court, Kolencherry. Appeal was filed against the order of acquittal passed by the trial court after getting leave as provided under section 378 (4) of the Code of Criminal Procedure. According to the complainant, an amount of Rs.30,000/- was borrowed from the appellant by the second respondent (accused) representing that he is the proprietor of Lakshmi Match Works and for discharging that liability a cheque drawn by the respondent on South Indian Bank Limited, Kolencherry Branch was issued in favour of the complainant. On presentation of the said cheque, it was dishonoured on the ground of insufficiency of funds. The cheque dated 26.4.1997 was marked as Ext.P1. Cheque return memos are Exts.P2 and P3 respectively. A copy of the lawyer notice was produced and marked as Ext.P4 and acknowledgement card was marked as Ext.P6. The lawyer notice intimating the dishonour of cheque and demanding payment of money was not replied.

Even though accused appeared before the court and denied the allegations, no evidence was adduced by him. The complainant was examined as PW1 and proved the allegations made in the complaint. PW2 branch manager of South Indian Bank Limited, Kolencherry was examined to prove the dishonour of the cheque for insufficiency of funds. Ext.P7 is the certified true copy of the ledger of account No.50 of South Indian Bank Ltd., Kolencherry Branch in which Ext.P1 cheque was issued. The said account is in the name of Lakshmi Match Works, Vadayampady P.O., Puthencruz. The account opening form of the said account is Ext.P8. Lakshmi Match Works is a proprietary establishment and the owner is Smt.K.P.Santhi, daughter of the accused. Ext.P9 is the memo authorising the accused K.N.Parameswaran Nair for operating the said account. Even though issuance of the cheque and its dishonour for insufficiency of funds were accepted by the court and also found that statutory notice and formalities were complied with before filing the complaint, the accused was acquitted on the sole ground that the cheque was issued in the account of a proprietary firm of which the proprietor was Smt.K.P.Santhi and not the accused. I am of opinion that

the trial court has grossly erred in arriving at such a finding. It is true that the account was maintained in the South Indian Bank Ltd. in the name of Lakshmi Match Works which is owned by Smt.K.P.Santhi, but, Smt.K.P.Santhi has given Ext.P4 authorisation memo to the accused for operating the account. The fact that he executed the cheque and issued to the complainant for valid consideration and it was dishonoured for insufficiency of funds is borne in by evidence. The cheque was dishonoured not because it was not signed by Smt.K.P.Santhi, account holder, it was dishonoured only for insufficiency of funds. In the above circumstances, ingredients of section 138 of the Negotiable Instruments Act are satisfied. Therefore, acquittal of the accused is liable to be set aside as there is gross irregularity and patent illegality in the findings of the trial court. I hold that the accused is guilty for the offences punishable under section 138 of the Negotiable Instruments Act. The matter is remanded to the trial court with regard imposition of sentence.

Parties should appear before the trial court on 18.12.2006.

I also make it clear that notwithstanding the conviction for the offence punishable under section 138 of the Negotiable Instruments Act, parties are also free to compromise the matter before the trial court.

J.B. KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.884/99

Judgment

Dated:29th November, 2006